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OCT 22 2018

HEALTH FACILITIES & SERVICES REVIEW BOARD

Jeffrey K. Gutman

October 19, 2018

Via Overnight Courier

Vice Chairman Richard Sewell
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, second Floor
Springfield, IL 62761

Re: Transformative Health of McHenry, Project No. 18-016 (the "Project")

Dear Vice Chairman Sewell:

We appreciate the opportunity to respond to the State Board Report ("SBR") for the Transformative Project referenced above. We concur with the State Board Report that this Project fails to meet the following five important review criteria:

- 1125.530 – Planning Area Need
- 1125.570 – Service Accessibility
- 1125.580 – Unnecessary Duplication/Mal-distribution
- 1125.800 - Availability of Funds
- 1125.800 – Financial Viaibility

We also believe that the Project fails to meet three additional review criteria. Further, we believe that of the five criteria with negative findings there are additional factors for these negative findings that merit further discussion in the State Board Report.

In an October 9 letter, I had provided a legal analysis of the Application on behalf of Crystal Pines Rehab & Healthcare Center, Fair Oaks Healthcare Center, The Springs at Crystal Lake, and Crossroads Care Center. We had hoped that that analysis would assist the Review Board and its staff in the review of the Project. Because the facts addressed in that October 9 letter appear not to have been reflected in the SBR we draw attention to those issues with the hope that they will be reflected in a revised SBR or be considered by the Board.

Before addressing the negative findings, we first point out again that the Applicants have not provided necessary information required by the Board's rules and past practices. Applicants have failed to provide required information about ownership, have not provided real referral letters and have not provided financial ratios for the applicant providing the financing. We believe the Board should issue an Intent-to-Deny pending submission of required information.

There Should be a Negative Finding on "Background of Applicant"

The Applicants have not disclosed ownership as required by the Board Rules and thus there must be a negative finding for the "Background of Applicant" criteria. Page three of the CON Application form states in bold font that "persons with 5 percent or greater interest in the licensee must be identified with the % of ownership." The Applicants have not complied and there must be a negative finding. Without this information the Board cannot vet the background of the Applicants.

We also note there should also be a negative finding based upon Site Control. No lease or operating agreement between the landowner and the operator has been provided, and thus the licensee cannot show control over the site.

The State Board Report (p. 3) states that the "Applicants were previously approved as Permit No. 15-044". The current Applicants characterize the new application as a "refile", and the SBR notes that the purpose of the project was to relocate a previously approved permit. There is no such action as a "refile" and this Application must be evaluated as a new application. This cannot be a relocation of a previous approved Project when none of the current applicants are the same as the 2015 project and the Project differs in other important ways. All of the prior ownership entities apparently chose not to participate in the new project. Moreover, the permit for any prior project has long ago been invalidated by change in location and applicants. There is no currently valid permit. Applicants should not be given favored status for "hoarding" an invalid permit when they should have relinquished that Permit long ago.

Please see our Oct. 10 letter for a detailed discussion of the issue of different applicants and non-disclosure of ownership.

There Should be a Negative Finding for "Service Demand"

The Applicants have not provided referral letters in compliance with the Board's rules. As we discussed in detail in the October 10 letter, the included Centegra "referral" letters state only the total number of referrals to all long-term facilities in the area and do not quantify how many, if any, referral it will make to this Project. In fact, a careful reading will show that the referral letters make no commitment to refer any patients to the proposed facility.1

In the 2015 project, the then applicants originally submitted similarly flawed letters. The Board issued an Intent-to-Deny and then requested the applicants to submit revised referral letters quantifying the number of referral it would make. The revised Centegra referral letters then quantified the referrals that would go to the new project.

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1 The Applicants used "referral" letters reciting that there was a calculated need for 84 beds in the area, knowing this recital was untrue in that there is a calculated excess of 33 beds.

Page 10 of the SBR states that referrals from Centegra hospital and related physicians total 3,913 referrals and seem to count this number as evidence of compliance with the review criterion. The SBR and Application notes there may be overlap between Centegra hospital and its related physicians. We believe that these numbers are actual duplicative and the Applicants need to differentiate these referrals and not simply say they may be overlap. Without a quantification of the number of referrals, there are no real referrals to use in meeting the Service Demand criterion. There must be a negative finding on this criterion and the Board should do as it did previously, vote an intent-to-deny, and demand real referral letters that comply with your rules.

See our October 10 letter details this issue. See also the highlighted section of the earlier revised referral letter that quantified the referrals versus the current letter with no commitment.

There should be a Negative Finding for "Assurances"

The Applicants have not provided the Board with a letter that states that it expects that it will achieve target occupancy. The applicants changed the language prescribed in the regulations to state only that under the rules they understood they were expected to reach target utilization. Until the Applicants provide a letter stating that they expect they will reach target utilization there must be a negative finding on this review criterion.

See our October 10 letter for more detailed discussion.

Availability of Funds

We concur with the SBR that the Applicants have not proven the availability of funds. In addition to the reason stated in the SBR, even if there was an actual commitment letter for the financing, the amount of cash and debt is still insufficient to show sufficient funds to pay for all project costs and start-up costs.

We also note that the bank letter included in the application states that the Borrower will be a joint venture with The Leo Brown Group and Ignite (p. 226, see attached). The Guaranty section of the bank letter states that it will require "unlimited, joint and several guarantees from principles and/or entities associated with the ownership of the project". If Ignite is guaranteeing debt, it, and any other entity guaranteeing debt, must explain its role and become a "Necessary Party" to the Application pursuant to 1130.220 (a)(4). As a necessary party they would become subject to all disclosure requirements of co-applicants, including providing financial statements and viability ratios.

See Oct. 10 letter for detailed discussion of these issues.

Applicant does not Provide Financial Viability Ratios or Audited Financial Statement for the Entity Providing the Funding.

We concur with the SBR that this application does not meet the Review Criteria for Financial Viability. In addition to the reasons noted in the SBR, additional reasons for non-compliance are even more troubling.

The Application states that the Leo Brown Group is providing the funding for the Project. The CON application form requires "The applicant or co-applicant that is responsible for funding or guaranteeing funding of the project shall provide viability ratios for the latest three years for which audited financial statements are available and for the first full fiscal year at target utilization, but no more than two years following project completion." This clearly applies to the Leo Brown Group and, if any other entity is guaranteeing debt, such as Ignite, to them as well.

The SBR states that The Leo Brown Group does not have audited financial statement and instead provided tax returns. While we agree that in certain situations tax returns can be filed to support the financial ratios, there are still major problems. First, while the SBR notes that tax information was filed, it does not say whether this information gives evidence of financial viability. Further, even if the tax information is an acceptable substitute, the **financial ratios are still clearly required**, both historical and projected. Not having audited financial statements does not relieve an applicant from providing the ratios.

Most troubling is that this information filed in lieu of financial statement was not included in the application and has not been included in the web site project file. We believe it inappropriate for the Board to rely on information that is not part of the public record.

Please see both the October 3 and October 10 letter discussing this financial viability issue in detail.

Conclusion

While the five negative findings in the current SBR provide more than ample reasons for the Board to deny this application, we ask your consideration of this letter and our prior letter detailing additional negative findings. Also troubling is that the present application simply omits important information required by your rules. This application's lack of transparency goes against the Board rules and process and we ask you issue an Intent-to-Deny.

Very truly yours,

Jeffrey K. Gutman

Enclosures

EXHIBIT A – PROPOSED BASIC LOAN TERMS

SUMMARY OF TERMS AND INDICATIVE PRICING AS OF March 15, 2018

On behalf of Merchants Bank of Indiana ("MBI"), I am pleased to present you with the following financing proposal.

BORROWER:	A Single Asset Affiliate to the Leo Brown Group. This will be a joint venture between The Leo Brown Group and Ignite.
PURPOSE:	Provide construction financing for McHenry Senior Skilled Nursing, a 84 bed project located in McHenry, Illinois
LOAN AMOUNT:	Up to a $13,171,500.00 Construction Loan limited to the lesser of: 75% of Appraised Value, 75% of Total Project Costs, OR 1.25x DSCR based on the applicable underwriting rate
INTENDED LOAN TAKEOUT:	FHA LEAN 232/223(f)
COLLATERAL:	1. A first real estate mortgage together with a first security interest in all inventory, equipment, fixtures, major movables, contract rights, accounts, accounts receivable, instruments, documents, chattel paper, trademarks, licenses, letter of credit rights, supporting obligations, general intangibles and any other real or personal property. 2. A first assignment of all construction contracts. 3. A first assignment and pledge of any and all leases and rents, together with any guaranties of any such leases. 4. A first security interest in all funds deposited with Lender.
TERM (Including any extensions):	1. Construction Loan: 36 Month Construction Period. 2. Mini-Perm Loan: 36 Month Mini-Perm Loan Period.
AMORTIZATION:	1. Construction Loan: Interest Only 2. Mini-Perm Loan: 25 Years
PRICING:	1. Construction Loan: Floating 285 basis points over 30-day LIBOR 2. Mini-Perm Loan: Option to Fix or Float upon conversion to Mini-Perm a. Fixed: 285 basis points over the 3-year Federal Home Loan Bank Advance Rate b. Float: 285 basis points over 30-day LIBOR
LOAN AND EXIT FEES:	1. MBI Construction Loan Origination Fee: 1.00% 2. Mini-Perm Conversion Fee: 0.00% 3. Exit Fee: Regardless of whether the loan has converted to the mini-perm or not, an exit fee of 2.0% will apply when the MBI loan is paid in full by another loan unless permanent financing is provided by MBI/PR Mortgage, or the project is sold to an unaffiliated buyer.
GUARANTY STRUCTURE:	MBI requires an unlimited, joint and several guarantee(s) from principals and/or entities associated with the ownership of the project. Any proposed guarantor(s) will be subject to Bank underwriting, credit analysis, and must be acceptable to the MBI in its sole discretion. Please note burn off of guarantor structures once a project reaches particular milestones may be available but is subject to MBI's review and approval on a project to project basis.

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Jeffrey K. Gutman

October 9, 2018

Via Overnight Courier

Ms. Courtney R. Avery
Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, second Floor
Springfield, IL 62761

Re: Transformative Health of McHenry, Project No. 18-016 (the "Project")

Dear Ms. Avery:

The proposed Project cannot be justified based on the criteria the Planning Act or regulations prescribe to establish a new facility. **There is no calculated need for a new facility,** area facilities are operating well below target utilization and the Project brings nothing new to the Planning Area or its residents. Further, because the **Applicants have not provided important required information,** the Board and staff should defer the Project until they receive the information required. If not deferred, the Application should be denied.

Area facilities are understandably concerned about new facility in an area where there is already many more beds than there are residents needing beds. They are even more concerned that the proposed Project does not meet the rules the Board has created. On behalf of Crystal Pines Rehab & Healthcare Center, Fair Oaks Healthcare Center, The Springs at Crystal Lake, and Crossroads Care Center, this letter outlines how the Project does not meet your rules and why the Applicants arguments do not justify approving a project that fails to meet your regulations.
This letter addresses the following reasons why the Board should deny or defer this Application:

- The Board's Bed Inventory shows there is no calculated need justifying a new 84-bed Facility
- This Project would Negatively Impact other facilities
- Referral letters do not quantify the number of referral and make no commitment to refer any residents
- The Applicants have not explained the roles of the parties to the Project to determine whether the Application includes all of the necessary co-applicants
- Project does not meet §1120 Requirements for Availability of Funds

- The Applicant providing the financing has not provided required Financial Viability Ratios or Audited Financial Statements
- The Project will not improve Access to Care
- This Project is not a "refile" of a prior application
- Applicants' "hoarding" of an invalid CON is contrary to Board rules and policy and Applicants should be sanctioned rather than rewarded

1. There is No Bed Need to Justify a New 84-bed Facility.

The McHenry planning area has a calculated excess of 33 beds and area providers are operating at only 68% utilization, well below the Board's 90% target. Clearly, there is no need for a new facility in the area.

To try to get around the surplus bed problem, Applicants seem to say that this Board should approve this Project since it had earlier approved a similar project that never went forward. When the Board approved the earlier project, however, after an Intent-to-Deny, the there was a calculated need for 127 additional beds. The State Board Report at the time found "The State Board has calculated a need for a 127 long term care beds in the McHenry County Long Term Care Planning Area based primarily on the State Board's population projection of 8.76% increase in the overall population in the McHenry County LTC Planning Area for the years 2013-2018."

The situation has changed considerably since the earlier project. There are now 33 excess beds, and even if the bed inventory was adjusted to remove the prior project, there would still be insufficient need for an 84-bed facility. It is one situation for the Board to approve a project when there is a calculated need, but an entirely different matter to approve a new project when there is not a calculated need for the new facility.

2, No Population Growth in McHenry County.

The Planning Area is not growing the situation since the earlier application was approved has also changed considerably in regards to population projections. Instead of the 8.76% growth projected at that time, there has been virtually no growth in recent years. **As the Northwest Herald reported last year in its article *"McHenry County, Illinois lose population again in latest census estimate - Studies paint bleak picture of reversing trend"* there has actually been decline.** (See attached Exhibit A).

This flat population is evident from the population numbers shown below for McHenry County:1

Year	Population	Growth	Rate
2011	308,387	-672	-0.22%
2012	308,387	-217	-0.07%
2103	307,607	-563	-0.18%

1 See attached Exhibit B.

2014	307,555	-52	-0.02%
2015	307,960	405	0.03%
2016	307,972	121	0.00%
2017	309,122	2,039	0.66%

These actual population numbers are important in two respects. First, it completely undercuts Applicants reliance upon a stated growth rate of 11.8%. Also, the statement from the application that "Therefore, it does appear to be a rapid population growth that is unique to McHenry County which is why there continues to be a need for additional beds and services", cannot be true. **There is no population growth justifying the proposed new facility, let alone any "rapid" growth.**

The actual population numbers also show an important problem in overstating the calculated bed need. The bed need calculation assumed that population in McHenry County would reach 345,100 in 2020, which it clearly will not. If the bed need calculation were adjusted to reflect more accurate 2020 population projections, the number of excess beds would be considerably higher.

3. This Project will Negatively Impact other Providers.

One of the key Board rules requires an applicant for a new facility to show that "the proposed project (a) will not lower the utilization of other area facilities below the occupancy standards . . . and will not lower, to a further extent, the utilization of other area facilities that are currently . . . operating below the occupancy standards." The Board has established a target of 90% utilization for long-term care facilities. **As the Application confirms, facilities in McHenry County operate at only 68.8% utilization. Not only is this low, it is also much lower than the statewide average of 74.4%.**

The primary purpose of the Planning Act and Board is to lower health care costs by not allowing establishment of new facilities and services when there is no need for new facilities. With only 68.8%, utilization there is clearly access for residents needing long-term care services. **The low utilization will only get worse. Alden opened its new 170-bed facility in Huntley this summer.** Located just over the county line in Kane County, the facility will serve Kane and McHenry equally and is located only 18 miles away (less than 30 minutes according to Google Maps). **Adding a new facility will exacerbate existing facilities low utilization. As we have shown elsewhere in this letter, this area is not experiencing a population growth that will raise all ships. Any resident going to the proposed facility will be one that otherwise would have gone to an existing facility.**

The negative impact is even more pronounced in that by proposing to take primarily short-term stay residents, the Applicants are proposing to take the highest paying residents. The Applicants in their pro forma state that 63% of their residents will be Medicare or Medicare managed care, which by the nature of this reimbursement is short-term care. **This will amount to the proposed facility taking almost 24% of all the short-term stays in McHenry County. These residents are ones existing facilities rely upon to offset losses in Medicaid and would have serious financial impact on other facilities.**

We understand that facilities have separately informed you of the negative impact of the proposed facility. The Applicants cannot and do not make any real argument that it will not harm existing providers. Existing facilities already experience low and declining utilization and this project will only make the situation worse.

4. **Project Will Not Achieve Target Occupancy – Referral Letters Make no Referral Commitment.**

a. Referral Letters Make no Commitment to Refer a Single Resident and do not Quantify any Referrals.

Although the Application includes letters purporting to be referral letters, these "referral letters" make no commitment to refer any residents to the new facility. Board regulations require that the referral source must state the "estimated number of prospective residents whom the referral sources will refer annually to the applicant's facility". Section 1125.540(d)(2). The "referral letters" at pages 114-123 state how many total referrals the hospital or physician make in total in prior years, *but makes no commitment to refer a single resident to the new facility.*

This failure to include real referral letters cannot be an accident. The prior application also attempted to count referral letters when there was no commitment. Review Board staff appropriately requested that the applicants provide real referral numbers that committed to make a referral and required the referral source to quantify the number of referrals. The referral sources then submitted new referral letters stating that 30% of its referrals for relevant two zip codes would go to the prior applicants. **None of the current referral letters make a single referral and staff should request real referral letters or not count the ones included.** Referral letters that quantify the number of referrals will clearly show either that there are not sufficient referrals to justify the new facility, or will do so only by showing that referrals to existing providers will be decimated. Without real referral letters there should be a negative finding on this review criterion.

The referral letters state that the referrals have not been used for any other application when in fact they were used for the earlier project. The Applicants cannot claim both to hold a current valid permit and that the referrals were not used for the other project. If the applicants want to use the included referral letters, it should first relegate the invalid permit.

b. Average Length of Stay (ALOS) Projected is not consistent with "Story" in Application.

The easiest way for any applicant wanting to show that its new facility will meet target utilization is by changing the assumption on average length of stay. An applicant can take the number of expected referrals and then multiply the referrals by the ALOS to calculate projected utilization. If the projected utilization is not sufficiently high to meet projected utilization, the applicant can manipulate that expectation to lengthen it to achieve the desired result. Consequently, the Board and its staff must look closely to the ALOS expectations to see if those expectations are consistent and legitimate.

The ALOS will differ greatly depending upon the type of resident admitted. The original project stated that it was focusing on short-term rehab services and the pro forma at page 238 confirms this. According to the pro forma, 82.8% of projected revenue will come from Medicare or Medicare managed care. A typical example of a short-term stay would be a Medicare resident that is recovering from joint replacement surgery and needing rehab therapy. Because this type care pays the highest reimbursement rate, Medicare, Medicare managed care entities, ACO's and hospital have created an industry expectation that short-term care stays should average not more than 7-14 days and should generally not exceed 13-15 days. For bundled care for joint replacement, the ALOS is closer to 5-7 days. By contrast, a geriatric patient who will likely never return to their home will have a much longer length of stay. This Project, at least in the original form, was consistent with the model and proposed an ALOS of 13 days. **It is interesting to see the history of ongoing lengthening of the ALOS calculations relating to this Project.**

2015 Original Application	13 day ALOS
Revised "Clarification" After Original Intent to Deny	28 day ALOS
Current Application	71 day ALOS

A facility which is over 80% Medicare revenue will certainly not have a 71 day ALOS. **If the proposed facility actually focuses on short-term stays, it will have an ALOS much less than 71 days. Consequently, the facility would need far more referrals than the 300 or 389 listed in the Application. The current projected ALOS cannot be consistent with the story of a facility focused on short-term care. Either the ALOS or the stated focus on short-term care is incorrect.**

c. Applicants Have Not Provided an Assurance that it Will Achieve Target Utilization.

Section 1125.640 requires Applicants to provide assurance that "the applicant will achieve and maintain the occupancy standards specified in Section 1125.210(c)" (emphasis added). The Applicants provide no such assurance. Instead, it merely states that it "understands that it is expected to achieve and maintain" this target occupancy. These "weasel words" merely state that they understand the rule and provide no assurance that they will achieve target occupancy. If Applicants expect to achieve target occupancy, they should be required to provide an Assurance that is in accord with the rule. If they cannot commit that they will achieve 90% utilization, they should at least be honest with the Board that they do not expect to achieve this utilization.

To provide an Assurance that a facility will achieve 90% utilization when no other facility in McHenry County achieves target utilization strains credibility. This utilization is even more difficult to achieve when the current utilization for all facilities averages only 68%. Nevertheless, the Applicant must assure the Board either that it will meet 90% utilization or admit that it will not.

5. Project Does Not Meet §1120 Requirements for Availability of Funds.

The Application has not provided evidence of the Availability of Funds as required by Board regulations. According to the Application, all equity and financing will come from the Leo Brown Group. Neither proof of cash availability nor proof of availability of the debt financing is conclusive.

Debt Financing. The Application includes a bank letter from Merchants Bank of Indiana (oddly enough not on bank letterhead) providing a conditional commitment for a loan. This letter, however, clearly states that conditional commitment expires on October 7, 2018 (Application, p. 225). This letter has expired and there has been no extension provided. Consequently, there is no valid assurance of availability of funds for the debt portion of the project costs.

Cash Availability. Project costs will be a combination of debt and equity, with $3,693,165 coming from cash. The Applicants provided a one-sentence letter stating that Leo Brown Group has an aggregate balance amongst all of the subsidiary companies of $4,032,065.22. **This letter is insufficient evidence of available funds.** First, this relates to the applicant and other affiliated companies. **Should those companies that are apparently playing a role in the financing also be co-applicants? Also, are all of these funds available for this Project?** Further, are there any outstanding liabilities that would offset this asset? A balance of $4 million proves nothing if there are liabilities in the amount of $3.9 million. **This is information that the Board consistently requires audited financial statements from the party doing the financing.**

Insufficient Capacity to Fund Operating Start-up Costs. Section 1125.800(b)(2) requires proof of ability to finance startup costs, "Operating Start-up Costs – the applicant shall document that financial resources will be available and be equal to or exceed any start-up expenses and any initial operating deficit." Page 33 of the Application states that the estimated start-up costs and operating deficit will be $1,000,000. **The amount of the loan and cash together do not equal the combined project costs and the estimated start-up costs and consequently the Applicants have not documented Availability of Funds.**

6. Applicant does not Provide Financial Viability Ratios or Audited Financial Statement for the Entity Providing the Funding.

The Application states that the Leo Brown Group is providing the funding for the Project. The CON application form requires "The applicant or co-applicant that is responsible for funding or guaranteeing funding of the project shall provide viability ratios for the latest three years for which audited financial statements are available and for the first full fiscal year at target utilization, but no more than two years following project completion." This clearly applies to the Leo Brown Group.

Nevertheless, **the application provides neither financial ratios nor the associated audited financial statements for the Leo Brown Group.** Once again, this omission can hardly be an accidental omission. The Application provides viability ratios for the other two applicants, but not for the applicant that will be providing the funding. Similarly, the 2015 application provided additional financial statements for the applicant providing the funding. Official corporate documents for Leo Brown Group show that it has been in existence since at least June 6, 2006, so there must be historical financial statements. (Application, p. 41).

In its October 3 letter, the Springs of Crystal Lake raised this concern and asked that the Board or staff defer the Project until the Applicants supply financial ratios and audited financial statements. **The Board staff has been vigilant in demanding these statements from other applicants and must do so here. This is not merely an issue of a negative finding and these financial statements should be supplied before the Project is even considered.**

7. **Medicaid Issues and Restructure Admission Policies.**

Facilities applying for a CON to establish a new facility recognize that the Review Board wants to hear about access for the medically indigent. Oftentimes, the story applicants tell the Review Board about payor source is not what actually happens once the project is opened.

Some of the Applicants statements regarding restrictive access are simply incorrect. Contrary to what the application states, every facility in the 17-mile radius accepts Medicaid. The Application states that The Springs of Crystal Lake has no Medicaid beds. (p. 131). **The IDPH facility profile included the Application (p. 135) shows this statement is wrong** in that all 97 beds are Medicaid certified and that the facility provided over 1,000 patient days of Medical Care. Similarly, the Applicants chart on page 130 show that Wauconda Healthcare & Rehab has no Medicaid beds. **Again, the IDPH profile included at page 140 shows this to be clearly wrong** in that the majority of its beds are Medicaid certified. In fact, 41% of Wauconda residents are Medicaid.

In contrast, the Applicants in their pro forma (p. 238) project that less than 30% of their residents will be Medicaid. Finally, the website for Ignite Medical Resorts, a party to the Project, shows its facilities, including this proposed facility, advertising its "uncompromising luxury", "concierge services", and spa services. **This is not the type of facility that is likely to meaningfully address Medicaid Accessibility and the Board should not be misled by this argument.** Even if the facility accepts the number of Medicaid residents it says, they will be accepting less than their fair share. The percentage they project accepting is less than half the statewide average.

8. **Prior Permit Has been Invalid for 18 Months.**

The Applicants recognize that the Project cannot be justified based on the Board's rules. Consequently, the primary justification the Application puts forward is that the Board should approve it because it is a "Refile" of a Project filed over three years ago that was never built. The Applicants state that if the Board will approve this Project, they will graciously relinquish their existing permit.

The Applicants have no existing permit to relinquish. The prior permit referenced, Project No. 15-044, (the "Invalidated Permit") was long ago invalidated. Board rules, Section 1130.710, state that a permit is "valid only for the defined site ...and persons named in the application is not transferable or assignable." Although the prior applicants long knew that it would not be able to build on the approved site, the permit became invalid on April 13, 2017 when the prior applicants were informed that no suitable site on the approved Centegra campus would be available and that they were instead seeking alternative sites. At that point, the permit became invalid.

a. New Application Has All New Parties.

In addition to the change of site invalidating the permit, that permit is invalid because there is a change in the person who is the holder of the permit. Section 1130.710 states that "A permit is invalidated by a change in the person who is the permit holder." As will be discussed below, none of the current co-applicants are the same as the prior permit. This change clearly invalidates the earlier permit.

b. <u>"Hoarding" of CON is Contrary to Board Rules and Policy</u>.

As soon as it was clear that the Invalidated Permit became invalid, the Applicants should have informed the Board that the permit was invalidated and the approved beds should have been returned to the bed inventory. If there was a bed need for the area, then another applicant who could have built should have been afforded that opportunity. Instead, the CON was "hoarded" and the Applicants now believe that by hoarding an invalid permit they should have preferred standing for a new permit. **This action is completely contrary to Board rules and policy and the Applicants should be sanctioned for their actions rather than rewarded. If he Board rewards this hoarding action, it will only encourage others to do so in the future.**

9. This is not the same Application as Previously Approved.

As the Board and staff know, there is no such thing as a "Refile" under the Board's rules. The Applicants try to characterize the Application as a refile, hoping to convince the Board to approve an application that it otherwise should deny. Even if there were a "refile", this Application is not one. This Application is far from the same application that the Board previously approved and the situation has changed considerably in the last three years—there is now no bed need in the area, utilization of other facility has further declined, the proposed size and cost is different, there are no valid referral letters, the financing is different, the expected average length of stay is much different and population in the planning area has now grown. Most significant, however, is that <u>all of the co-applicants are different from the Invalidated Permit</u>.

Co-applicants on the 2015 application were Mainstreet Property Group, LLC (the entity that provided all of the equity and financing), MS McHenry, LLC (described in the application as a joint venture with Mainstreet Property Group, and TCO JV, LLC, an Indiana LLC, (ownership not specified, but described as affiliated with Symphony Post-Acute Network, which Symphony subsequently disavowed). The current co-applicants are the Leo Brown Group (the entity that is said to be providing all of the equity and financing), McHenry Senior Partners, LLC (a joint venture between the Leo Brown Group and Ignite McHenry Property, LLC) and TCO JV, an Illinois LLC.

Although the TCO JV has the same name, it is indisputably a different person under the law. The new TCO JV was only established May 29, 2018 (see Certificate of Good Standing, application p. 59) and did not even exist when the prior application was filed or approved. Further, the new TCO JV is a joint venture of the Leo Brown Group and McHenry Senior Investors, LLC, Ignite McHenry, LLC and JMD & Associates, LLC. The only overlap appears to be the name of the project and one individual developer who has no ownership interest. By a letter dated October 3, 2018, the Springs of Crystal Lake asked that the identity of these parties and their roles in the Project be described to staff before the Board considered the Project. To call this Project a "refile" of an earlier project when it has completely different owners and operators is a mischaracterization, at best.

10. Board and Staff Should Defer Project Until Applicant Provide Required Information.

The Springs of Crystal Lake had previously submitted a detailed letter (See attached

Exhibit C) outlining the important information that should have been included in the CON application but was not. This highlighted that, among other items, **the Application did not provide core facts about the Project:**

- **An explanation of the ownership structure and the role of the parties in the project**
- **Evidence that all of the necessary co-applicants were part of the application**
- **Listings of other facilities that co-applicants may operate**
- **Evidence that the parties had site control over the land and that the operator has a lease or operating agreement with the owner; and**
- **Financial Ratios or Audited Financial Statements for the Leo Brown Group, the entity that will be providing all of the funding.**

We particularly believe the role of Ignite Medical Resorts needs to be shown. Referral letters, news articles and even its own website showed Ignite Medical Resorts' involvement in the Project, without ever showing them as a party or co-applicant. To our knowledge, this information has not been supplied, and certainly not supplied in a timeframe that would allow the public to review this information. We again ask that the Project be deferred pending submission of their information.

11. Conclusion.

This Application exhibits a lack of respect for the Review process. The Applicants did not provide important information such as audited financial statements, viability ratios, explanations of the roles of the participants and other documentation. The referral letters make no real referrals and the Assurance letter provides no meaningful assurance for meeting target occupancy. The disrespect for the review process is perhaps no more evident than in the Ignite web site that has already posted that this McHenry facility is opening in 2020. (See attached Exhibit D.) The Applicant should not take the Board, and its approval, for granted, particularly when they have not complied with you rules.

Please defer this Project until they provide necessary information or deny the Project for failing to meet your rules.

Very truly yours,

Jeffrey K. Gutman

Enclosures

cc: Michael Constantino
Jeannie Mitchell

McHenry County, Illinois lose population again in latest census estimate

Studies paint bleak picture of reversing trend

By KEVIN P. CRAVER kcraver@shawmedia.com
April 30, 2017

The latest annual U.S. Census Bureau population estimates once again sound a familiar refrain – McHenry County and Illinois are losing people.

While it should not be a surprise to anyone who follows current events and state politics that Illinois is hemorrhaging residents to other states – the exodus last year hit 100,000 for the first time – it is telling that a county that in previous decades was one of the fastest-growing in the nation is now suffering the same.

McHenry County had a net loss of 184 people between July 2015 and July 2016, according to the new data, making for an overall loss of 1,756 since the decennial 2010 Census to 307,004. Since 2010, McHenry County has lost population in every annual estimate but one.

Such a small decrease on its face might not seem like a lot, but it should sound alarm bells in a county that grew by 18.7 percent in the previous decade and almost 42 percent in the decade before that. Barring a sudden upswing, the 2020 Census will be the first in which McHenry County lost population since the original 1840 census taken four years after the county's founding.

While much of the downtrend can be blamed on the end of the county's white-hot housing boom with the bursting of the housing bubble a decade ago, experts and observers say other factors now are just as responsible for driving people out.

Real estate agent and lifelong county resident Shawn Strach has heard them all in his 14-year career selling homes – but by far, the most common responses he hears is the tax burden and the scarcity of jobs.

"I think, ultimately, the concern in the marketplace today is why people are leaving. It's a plethora of reasons," he said.

Multiple studies and analyses confirm Strach's observation and put a more disturbing face on the latest census estimate.

Several studies put Illinois' property tax burden at the highest or second-highest of all 50 states, with critics alleging that many residents pay more on their property taxes than they do their mortgages. A 2010 analysis by the nonprofit, Washington, D.C.-based Tax Foundation puts McHenry County's at 29th highest of all counties nationwide.

Even though property values plummeted in the wake of the Great Recession, property taxes stayed the same or increased – a fact that a number of former McHenry County residents cited as the last straw for them in a 2015 series the Northwest Herald wrote on the local property tax burden.

They're hardly alone. A 2014 Gallup poll and a 2016 poll by the Paul Simon Public Policy Institute at Southern Illinois University at Carbondale concluded that more than half of Illinois residents want to move elsewhere. One out of four Illinois residents in a separate Gallup poll called Illinois the worst state in which to live.

As for jobs, on top of the fact Illinois' job growth since the Great Recession has paled in comparison with neighboring states, that growth isn't happening here – studies commissioned for McHenry County show that about two-thirds of working residents commute to other counties for their jobs.

Those neighboring states also are getting most of the people leaving Illinois, according to a 2015 study by the Northern Illinois University Center for Governmental Studies, which disputes the argument that people are leaving to live in warmer climates.

Yet another study – a 2016 economic development study commissioned for McHenry, Boone and Winnebago counties – casts an even darker light by showing just who the people are who are leaving.

The study revealed that the three counties between 2010 and 2014 lost almost 8 percent of 25- to 44-year-old residents, or about 12 times more than what the rest of the Chicago region lost. That demographic is considered critical to planners because it's the one that starts families and businesses.

To former Illinois state representative and current McHenry County Board Chairman Jack Franks, D-Marengo, taxation and population drop are a "dysfunctional cycle" that has to be broken. County government several weeks ago approved a plan to cut its tax levy by at least 10 percent, and Franks said other local bodies, especially school districts that make up the largest share of property tax bills, must follow suit.

While he touted job-creating projects, such as the full Interstate 90-Route 23 interchange that Marengo city leaders envision as a manufacturing hub equidistant to O'Hare and Rockford airports, he said tax reform has to be local governments' top priority if the declining population trend is to be reversed.

Cite This Page

12/16/2017 309,122

McHenry County, Illinois Population 2018

2017 Growth Rate	
County Website	McHenr (http://www.co.mche
State	Illinois (/state pop
Founded	January 16th,
County Set	W

EXHIBIT B

LatLng (42.324, (https://www.google.con q=42.324,

How Many People Live in McHenry County, Illinois?

309,122

McHenry County, Illinois's estimated population is 309,122 with a growth rate of 0.66% in the past year according to the most recent United States census data (https://www.census.gov/data/datasets/2017/demo/popest/counties-total.html). McHenry County, Illinois is the 6th largest county in Illinois.

Year ▾	Population	Growth	Growth Rate
2017	309,122	2,039	0.66%
2016	307,083	-889	-0.29%
2016	307,972	12	0.00%
2016	307,960	405	0.13%

Year	Population	Growth	Growth Rate
2014	307,555	-52	-0.02%
2013	307,607	-563	-0.18%
2012	308,170	-217	-0.07%
2011	308,387	-672	-0.22%
2010	309,059	125,818	68.66%
1990	183,241	35,344	23.90%
1980	147,897	36,342	32.58%
1970	111,555	27,345	32.47%
1960	84,210	33,554	66.24%
1950	50,656	13,345	35.77%
1940	37,311	2,232	6.36%
1930	35,079	1,915	5.77%
1920	33,164	655	2.01%
1910	32,509	2,750	9.24%
1900	29,759	3,645	13.96%
1890	26,114	1,206	4.84%
1880	24,908	1,146	4.82%
1870	23,762	1,673	7.57%
1860	22,089	7,111	47.48%
1850	14,978	12,400	480.99%
1840	2,578		0.00%

McHenry County, Illinois Population Growth

Population Data via

Population of Cities in McHenry County, Illinois

City	2010 Census	2016 Estimated	Growth	Growth Rate
Crystal Lake	40991	40339	-652	-1.59%
Algonquin	30049	30947	898	2.99%
Lake in the Hills	29005	28830	-175	-0.60%
McHenry	27016	26611	-405	-1.50%
Huntley	24316	26611	2295	9.44%
Woodstock	24764	25085	321	1.30%
Cary	18268	17840	-428	-2.34%
Fox Lake	10609	10459	-150	-1.41%
Harvard	9435	9119	-316	-3.35%
Island Lake	8074	8077	3	0.04%
Marengo	7675	7445	-230	-3.00%
Johnsburg	6337	6264	-73	-1.15%
Lakemoor	6057	5982	-75	-1.24%
Spring Grove	5772	5674	-98	-1.70%
Fox River Grove	4791	4651	-140	-2.92%
Barrington Hills	4219	4221	2	0.05%
Wonder Lake	4014	3899	-115	-2.86%
Lakewood	3814	3869	55	1.44%
Oakwood Hills	2083	2050	-33	-1.58%
Richmond	1876	1897	21	1.12%
Prairie Grove	1907	1857	-50	-2.62%

City	2010 Census	2016 Estimated	Growth	Growth Rate
Port Barrington	1517	1494	-23	-1.52%
Hebron	1216	1194	-22	-1.81%
Bull Valley	1122	1097	-25	-2.23%
McCullom Lake	1049	1012	-37	-3.53%
Ringwood	836	818	-18	-2.15%
Holiday Hills	601	588	-13	-2.16%
Union	580	552	-28	-4.83%
Trout Valley	537	525	-12	-2.23%
Greenwood	255	249	-6	-2.35%

Data Sources

1. US Census City/Town Population estimates (https://www.census.gov/data/tables/2016/demo/popest/counties-total.html) - Most recent state estimates from the Census Bureau's Population Estimates Program
2. Population of States and Counties of the United States: 1790 - 1990 (https://www.census.gov/population/www/censusdata/pop1790-1990.html)

(https://https://www

THE SPRINGS
at Crystal Lake Rehab Center

October 3, 2018

RECEIVED

OCT 0 4 2018

HEALTH FACILITIES & SERVICES REVIEW BOARD

Via Overnight Courier

Ms. Courtney R. Avery
Administrator
Illinois Health Facilities and Services Review Board
525 West Jefferson Street, 2nd Floor
Springfield, IL 62761

Re: Transformative Health of McHenry, Project No. 18-016 (the "Project")

Dear Ms. Avery:

We have been reviewing the permit application for the Project referenced above (the "Application"). In our review, it appears that the Application is missing important information required by your rules. We believe that this information is important to the public in reviewing the Project, and particularly important to Board members and staff.

This letter outlines information missing from the Application that is required by the Review Board regulations. We would ask that the Board defer action on this Application until the Applicants provide the necessary information to the Board and its staff and the public has opportunity to comment on the new information. Alternatively, we believe the State Board Report should make negative findings on review criteria where necessary documentation has not been submitted.

1. Organization Structure and Ownership

The Application repeatedly states that this is a "refile" of a prior application, notwithstanding that the vast majority of the applicants are completely different parties. One of the difficult aspects in understanding the Application is determining who the entities are and what role they play in the Project.

The CON application form requires that Applicants provide an "organizational chart containing the name or relationship of person or entity that is related".[1] Further, the applicants are required to describe the interest and amount or type of any financial contribution.

EXHIBIT C

[1] **Organizational Relationships**

Provide (for each applicant) an organizational chart containing the name and relationship of any person or entity who is related (as defined in Part 1130.140). If the related person or entity is participating in the development or funding of the project, describe the interest and the amount and type of any financial contribution. (Application p. 2)

The organizational chart at page 60 does not show all of the co-applicants, for example, the co-applicant Leo Brown Group, LLC is not even listed. Also, the Application states TCO JV, LLC is a joint venture, however, the org chart does not show the owners and does not describe who has "final control" of TCO JV. Similarly, the org chart gives no explanation of the ownership interest of the listed parties and does not describe the "interest and amount of any financial contribution". Also troubling is that the Application and org chart omits "any person who is related". Further, the org chart does not explain the role of some entities, such as Ignite McHenry, LLC or Ignite McHenry Property, LLC. Also, the owner of the property, Senior Acquisitions LLC, and its relationship to the transaction is never explained.

In addition, Board regulations require that "persons with 5 percent interest" be identified with the % of ownership.[2] The Application does not specify ownership percentages as required. The role of each co-applicant and related party should be fully disclosed in the Application as well as the role that party plays in the transaction before the Application is considered by the Board.

2. Necessary Applicants[3]

The disclosure and role of the parties to the Project must be disclosed for another very important reason—to ensure that all necessary parties are co-applicants as required by Section 1110.220 of the Board Rules. [See regulation in Footnote 3 below]. Without knowing the role and ownership of the parties, as discussed above, there is no way to know whether all of the Necessary Parties are co-applicants as required. For example, all of the referral letters state that

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[2] **Persons with 5 percent or greater interest in the licensee must be identified with the % of ownership. (Application, p. 2)**

[3] **Section 1130.220 Necessary Parties to the Application for Permit or Exemption**

A permit or exemption shall be obtained prior to the acquisition of major medical equipment or to the construction or modification of a health care facility [20 ILCS 3960/5]. The following persons shall be the applicants for permit or exemption, as applicable.

a) For construction or modification projects (including projects to establish or change the ownership of health care facilities and including projects to acquire major medical equipment by or on behalf of health care facilities) of one or more existing or proposed health care facilities.

1) the person who will hold and who currently (as applicable) holds the license (or Medicare and/or Medicaid certification if licensing is not applicable) for each facility;

2) the person who has final control of the person who will hold or who currently holds (as applicable) the license (or Medicare and/or Medicaid certification if applicable) for each facility;

3) any related person who is or will be financially responsible for guaranteeing or making payments on any debt related to the project; and

4) any other person who actively will be involved in the operation or provision of care and who controls the use of equipment or other capital assets that are components of the project, such as, but not limited to, fixed equipment, mobile equipment, buildings or portions of buildings, structures such as parking garages, etc.

the Project is a joint venture between the Leo Brown Development Group and Ignite Medical Resorts (see Application pp. 78-87). Should Ignite Medical Resorts be a co-applicant, Ignite McHenry or Ignite McHenry Property? The entity that has "control" over Ignite McHenry must be disclosed in the organization structure. Again, this role is never explained and the Application should not go forward without all necessary co-applicants.

3. Background of Applicants[4]

As part of the application, co-applicants must list all health care facilities it owns. According to the Leo Brown Group website, it has facilities in a number of states, including Illinois (see attached). Similarly, the website for Ignite Medical Resorts lists multiple facilities. The Application, however, shows no facilities for Leo Brown or Ignite Medical Resorts. If either party owns facilities, they should be disclosed; if there are none, the Application should so state.

4. Site Control[5]

The Application does not show that any Applicant has site control of the property. Board regulations require "proof of ownership or control of the site". Indeed, the Application shows that Senior Acquisitions LLC owns the property—but the Application never links this ownership to any applicant. McHenry Senior Partners is designated as the "owner" but there is no evidence of it having control over the site and the Application must address this requirement.

The Application also fails the site control requirement for another reason. The Applicants distinguish between the owner and the operator of the facility, showing McHenry Senior Partners, LLC as the owner and TCO JV, Inc. as the operator. The Application, however, never shows a link between the two. There would most certainly be a lease between the owner and the operator or at least an operating agreement. The Application discloses neither. This important document should be included before the Application can move forward.

5. Financial Ratios and Audited Financial Statements[6]

The Application states that the Leo Brown Group, LLC "is providing the funding for the project" (Application p. 60). The application form clearly states that "The applicant or co-

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4 **BACKGROUND OF APPLICANT**

1. A listing of all health care facilities owned or operated by the applicant, including licensing, and certification if applicable

2. A listing of all health care facilities currently owned and/or operated in Illinois, by any corporate officers or directors, LLC members, partners, or owners of at least 5% of the proposed health care facility.

5 **Proof of ownership or control of the site is to be provided as Attachment 2. Examples of proof of ownership are property tax statements, tax assessor's documentation, deed, notarized statement of the corporation attesting to ownership, an option to lease, a letter of intent to lease, or a lease.**

6 The applicant or co-applicant that is responsible for funding or guaranteeing funding of the project shall provide viability ratios for the latest three years for which audited financial statements are available and **for the first full fiscal year at target utilization, but no more than two years following project completion.** . . . Complete a separate table for each co-applicant and provide worksheets for each.

applicant that is responsible for funding or guaranteeing funding of the project shall provide viability ratios for the latest three years for which **audited financial statements are available."** Incredibly, the application then proceeds to produce financial ratios for the operator, but not the entity that is providing the financing. We find it hard to believe that this omission was merely an oversight. In the prior application the Applicants reference. Project No. 15-044, the Application included audited financial statements for the entity providing financing. Board staff has previously been consistent in requiring this information and should require the audited financial statement of the Leo Brown Group and the financial ration.

Conclusion

This Application omits important information required by Board rules that is necessary for the Board, its staff, and the public to have in its view. If the many omissions are oversights only, then the Application is not yet ready for consideration. If instead, the omissions of withholding of important information was intentional or strategic, the Board should not allow the Application to go forward until there is respect for the review process.

Very truly yours.

Mark Weidler
The Springs at Crystal Lake
1000 East Brighton Lane
Crystal Lake, IL 60012
815-477-6400

cc: Michael Constantino
Jeannie Mitchell

AVANTI

AN IGNITE MEDICAL RESORT

6840 W Touhy Ave
Niles, IL

IGNITE
MEDICAL RESORT

2100 NW Barry Rd
Kansas City, MO

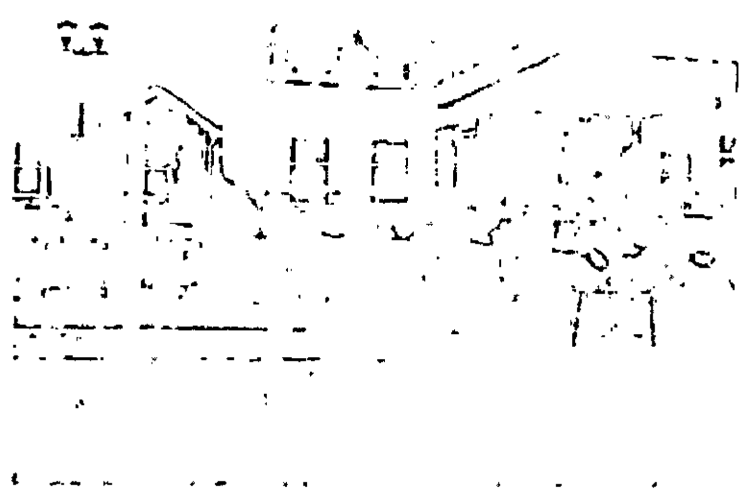
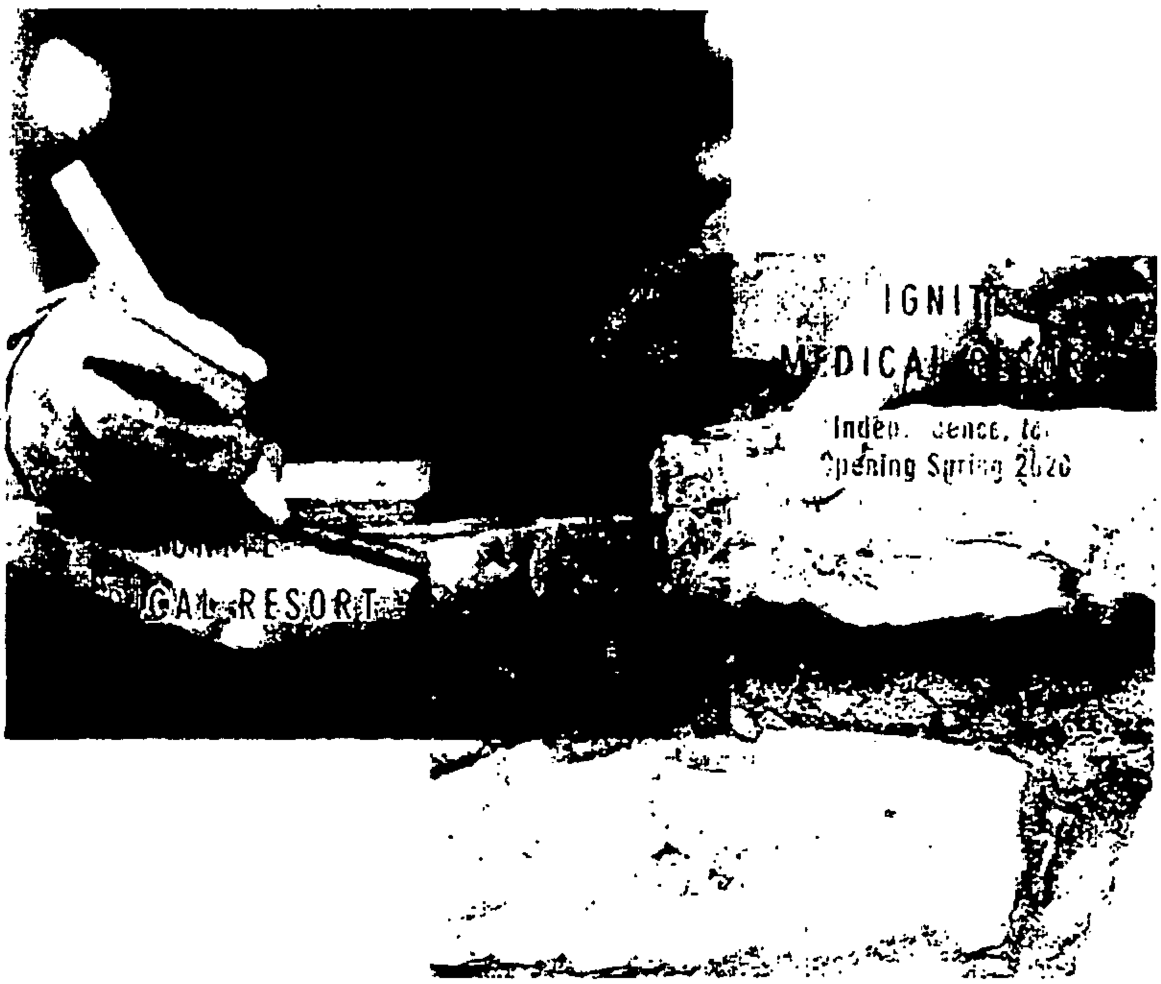


EXHIBIT D



IGNITE
MEDICAL RESORT
McHenry, IL
Opening Summer 2020